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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,409	10/01/2003	Thomas M. Fudali	66396-072	5122

7590 02/14/2007  
McDERMOTT, WILL & EMERY  
600 13th Street, N.W.  
Washington, DC 20005-3096

EXAMINER
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CHOW, DOON Y

ART UNIT	PAPER NUMBER
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2629

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/14/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/674,409

Applicant(s)

FUDALI ET AL.

Examiner

Dennis-Doon Chow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 10-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I, Claims 1-9 in the reply filed on 12/13/2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Szukala et al. (6801849).

Regarding to claims 1-2, Szukala discloses a user interface for invoking a function of a diagnostic instrument, the user interface comprising: a first navigational menu including at least one display element (Figs. 7a and 7b); a touch sensitive active region (col. 13, line 60 to col. 14, lines 3; col. 15, lines 31-34) a second navigational menu (Figs. 8a-14a) configured to be displayed responsive to contact on the touch

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sensitive active region of the at least one display element, the second navigational menu including a selection group related to a test suite of the diagnostic instrument.

Regarding to claim 3, Szukala further discloses the selection group includes fewer than ten display elements (Figs. 8a-8c) to permit discrete touch sensitive selection of each of the ten display elements.

Regarding to claim 4, Szukala further discloses the first navigational menu includes at least six display elements (Fig. 7b), each of the six display elements having a discrete touch sensitive active region sized to permit finger tip selection.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Szukala et al.

Regarding to claims 5, Szukala further discloses the menus having a textual description of functionality invoked by user selection of the display element (Figs. 7a-8c), but fails to disclose a graphical representation of functionality invoked by user selection of the display element. However, the examiner takes Official Notice that a graphical representation of functionality invoked by user selection of a display element

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in a menu is old and well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art to use the graphical representation in Szukala' menu because the graphical presentation provides a short but clear description of the display element.

Regarding to claims 6-8, Szukala further discloses the active region comprises an area having a polygonal shape (see Figs. 7a-7b). Szukala does not explicitly disclose the polygonal shape region having at least  $\frac{1}{4}$  square inch, or the active region comprises a circular shape with a diameter of at least  $\frac{3}{8}$  inch. However, it would have been obvious to one of ordinary skill in the art to make the active region large enough so that a neighbor active region can be prevented from inadvertently activated when the active region is touched by the user's finger.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Szukala et al. in view Cross et al. (7154481).

Szukala fails to disclose the active region to be responsive to a gloved finger.

Cross-, in the same field, discloses a touch screen comprising an active region to be responsive to a gloved finger (col. 4, lines 4752).

In light of Cross, it would have been obvious to one of ordinary skill in the art to use Cross's touch sensor means in Szukala's invention because so that the active region can be activated with a gloved finger.

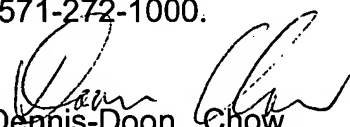
### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis-Doon Chow whose telephone number is 571-272-7767. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sumati Lefkowitz can be reached on 571-272-3638. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Dennis-Doon Chow  
Primary Examiner  
Art Unit 2629

D. Chow  
February 9, 2007